

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
LITTLE SNAKE FIELD OFFICE
DECISION RECORD**

**February 2012 - Colorado Competitive Oil & Gas Lease Sale
DOI-BLM-CO-N010-2011-0104-EA**

Decision:

It is my decision to implement the Proposed Action of the Environmental Assessment (EA), and to recommend that the six (6) parcels from the Little Snake Field Office (LSFO), as identified in DOI-BLM-CO-N010-2011-0104-EA, be offered at the February 2012 - Colorado Competitive Oil & Gas Lease Sale. It is also my decision to recommend that the parcels falling within a greater sage grouse core area be deferred from the February 2012 Lease Sale.

Authorities:

The authority for this decision is contained in 43 CFR 3100.

Plan Consistency:

LAND USE PLAN (LUP) CONFORMANCE REVIEW: The proposed action was reviewed for conformance (43 CFR 1610.5, BLM 1617.3) with the following plan:

Name of Plans: Little Snake Record of Decision and Resource Management Plan (RMP)

Date(s) Approved: October 2011

Results: The Proposed Action is in conformance with the LUP because it is specifically provided for in the following LUP goals, objectives, and management decisions as follows:

Allow for the availability of the federal oil and gas estate (including coalbed natural gas) for exploration and development. Objectives for achieving these goals include:

- Identify and make available the federal oil and gas estate (including coalbed natural gas) for exploration and development.
- Facilitate reasonable, economical, and environmentally sound exploration and development of oil and gas resources (including coalbed natural gas).

Section/Page: Section 2.13 Energy and Minerals/ page RMP-36

Terms/Conditions/Stipulations:

All parcels are subject to standard lease notices 1-3 and the Special Lease Stipulation for cultural resources. They are also subject to the Washington Office: Threatened and Endangered and Sensitive Species Stipulation (included within Instruction Memorandum No. 2002-174); the Migratory Bird

Species-Interim Management Guidance Policy (included within Instruction Memorandum (IM) No. 2008-050). Individual parcels are subject to parcel specific stipulations for wildlife resources, paleontological or cultural resources, and conflicting use protection, such as coal mining. Refer to Attachments A, B, and C in the EA for the actual stipulations and lease notices applied to a given parcel.

Additionally, there would be a recommendation to the State Director to defer the offering of five (65) parcels containing approximately 70,123.29 acres. To ensure new mitigation measures that may be developed during the Colorado Northwest District Greater Sage-grouse EIS are not precluded in priority habitats, all parcels that are within Preliminary Priority Habitat (per WO IM No. 2012-043) are being deferred at this time.

The decision of the State Director may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from your receipt of this decision. The appellant has the burden of showing that the Decision appealed from is in error.

If you wish to file a petition (pursuant to regulation 43 CFR 3165.4(c)) for a stay of the effectiveness of this Decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. A copy of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Compliance with Major Laws:

The proposed decision and proposed oil and gas leases with stipulations are in compliance with all applicable law, regulations, and policies, including the following:

- Endangered Species Act
- Migratory Bird Treaty Act
- Clean Water Act
- National Historic Preservation Act
- Clean Air Act

Monitoring:

No monitoring would be required in the sale and issuance of the lease parcels. Should the parcels be developed, monitoring may be required and would be analyzed under future NEPA documentation.

Alternatives Considered:

Alternative 1: Full lease sale with standard stipulations -- Under Alternative 1, all 72 nominated parcels would be offered for sale and subsequent oil and gas leasing with the stipulations recommended at the time of nomination, approximately 75381.79 acres.

Alternative 2: Proposed Action – The Proposed Action Alternative analyzes the sale and issuance of six (6) nominated parcels with stipulations recommended at the time of nomination as well as additional stipulations identified through analysis. Lease stipulations (as required by 43 CFR 3131.3) were added to each parcel as identified by the LSFO to address site specific concerns. This alternative also analyzes the deferral 70,123.29 acres due to resource conflicts or protection measure not addressed in the land use plans. Sixty-five (65) of the parcels nominated were recommended to be entirely deferred based on their potential effects in greater sage-grouse core area until the RMP implementation plan is completed for LSFO.

Alternative 3: No Action -- Under the No Action alternative, the BLM would not sell nor issue any of the leases that have been nominated. Surface management would remain the same and ongoing oil and gas development would continue on surrounding federal, private, and state leases.

Rationale for Decision:

The decision to approve the Proposed Action is based upon the following: 1) conformance with the LSFO RMP; 2) national policy; 3) agency statutory requirements; 4) relevant resource and economic issues; 5) application of measures to avoid or minimize environmental impacts; and 6) meeting the purpose and need for the project. Additionally, all parcels that are within Preliminary Priority Habitat (per WO IM No. 2012-043) are being deferred at this time

1. This decision is in conformance with the LSFO RMP.
2. It is the policy of the BLM as derived from various laws, including the Mineral Leasing Act (MLA) of 1920, as amended [30 U.S.C. 181 *et seq.*] and the Federal Land Policy and Management Act of 1976 (FLPMA), to make mineral resources available for disposal and to encourage development of mineral resources to meet national, regional, and local needs.
3. The decision is consistent with all federal, state, and county authorizing actions required for implementation of the Proposed Action.
4. Standard terms and conditions as well as special stipulations would apply. Lease stipulations (as required by 43 CFR 3131.3) were added to each parcel as identified by the LSFO to address site specific concerns or new information not identified in the land use planning process.
5. The Proposed Action provides for the potential exploration and development of additional oil and gas resources to help meet the nation's current and expanding need for energy sources without creating the impacts associated with offering leases in sage-grouse core areas.

Finding of No Significant Impact:

Based on the analysis of potential environmental impacts contained in the referenced environmental assessment (EA), and considering the significance criteria in 40 CFR 1508.27, a Finding of No Significant Impact (FONSI) was prepared. The selected alternative will not have a significant effect on the human environment. Therefore, preparation of an environmental impact statement is not necessary. This finding is based on the context and intensity of the alternatives as detailed in the FONSI.

Public Involvement and Comments: The preliminary EA was posted in the LSFO public room and on the NEPA register (http://www.blm.gov/co/st/en/BLM_Information/nepa/lsofo.html) of the BLM CSO for a 30-day public review period. The comment period began August 18, 2011. A press release went out on August 22, 2011 and was distributed to the BLM's statewide media list, constituent list, and congressional list. The comment period closed 5:00 PM Mountain time, September 19, 2011.

Three (3) letters of comment were received.

Comments and Responses: The Wilderness Society, Rocky Mountain Wild, and Colorado Environmental Coalition

I. BLM Must Evaluate Additional Alternatives To Address "Unresolved Resource Conflicts."

The Draft EA contains only two alternatives: a "proposed action" alternative and "no action" alternative. Draft EA at 2-3. This range of alternatives is not consistent with the National Environmental Policy Act (NEPA), however, which requires BLM to "[r]igorously explore and objectively evaluate all reasonable alternatives" to proposed federal actions. 40 C.F.R. § 1502.14(a). Nor does it comply with Instruction Memorandum (IM) 2010-117, which directs BLM to develop "alternatives to the proposed action that may address unresolved resource conflicts." IM 2010-117 at III.E; see also BLM NEPA Handbook at 6.6.1 (recommending that for "externally generated" actions, such as leasing proposed by the oil and gas industry, BLM evaluate a "proposed action" alternative, a "no action" alternative and an alternative that includes "changes BLM makes to the proponent's proposal."). Thus, in the Final EA, BLM must consider "alternatives to the proposed action that may address unresolved resource conflicts." Many other field offices are evaluating such alternatives in leasing EAs, and are typically designating one of those alternatives as the agency's "preferred" alternative. See 40 C.F.R. § 1502.14(e) (requiring BLM to identify a "preferred alternative" in NEPA documents). BLM should do the same here, as well as in all future leasing EAs.

We are aware that the Colorado State Office has issued implementation guidance for IM 2010-117 which suggests that BLM should only consider leasing alternatives beyond the "proposed action" and "no action" alternatives "in situations where significant new information indicates that the resource protections in the land use plan are insufficient and a plan amendment is indicated." IM CO-2010-027 (emphasis in original) (Attachment 1). This guidance is inconsistent with controlling national guidance (as well as with NEPA), however, which requires an analysis of additional alternatives anytime "unresolved resource conflicts" exist. IM 2010-117.E; see also 40 C.F.R. § 1502.14(e), (f) (requiring the identification of "appropriate mitigation measures not already included in the proposed action or alternatives" in NEPA documents). This requirement applies even when a plan amendment is not under consideration, because, as explained in IM 2010-117, not all measures that address "unresolved resource conflicts" trigger a plan amendment, including deferring or modifying the boundaries of proposed lease

parcels. See IM 2010-117 at III.C.2, III.F. Thus, under IM 2010-117 and NEPA, BLM is required to consider alternatives to addresses “unresolved resource conflicts” in leasing EAs.

Again, we fully support the proposed deferrals to protect high and medium priority sage grouse habitat in the Little Snake Field Office. However, BLM should not have folded those proposed deferrals into the proposed action. Rather, as required by IM 2010-117 and NEPA, BLM should have included the deferrals in a separate alternative that contains the other measures that are necessary to address “unresolved resource conflicts.” Doing so ensures that the impacts of the proposed action (i.e., leasing all of the nominated parcels that conform to the applicable RMP) are fully identified in leasing EAs and that any “unresolved resource conflicts” associated with the proposed action are adequately addressed by other alternatives.

Recommendation: In the Final EA, BLM should revised the “proposed action” alternative and include all of the proposed lease parcels that conform to the current RMP. BLM should also develop a third alternative to address “unresolved resource conflicts” associated with the proposed action. This alternative, which should be designated as the agency’s “preferred alternative,” should contain the proposed deferrals for high and medium priority sage grouse habitat, as well as any other measures that are necessary to resolve resource conflicts.

BLM Response: *The alternatives analyzed and environmental impacts addressed in the 1991 Colorado Oil and Gas Leasing Development FEIS, in our judgment, adequately address current environmental concerns, interests, and resource values including sensitive species. Environmental impacts are addressed again at a site-specific level upon receiving oil and gas Applications for Permit to Drill (APD). The Proposed Action is in conformance with the 2011 RMP because it is consistent with the RMP energy resource goals, objectives, and management decisions. The LSFO, Surface Use and Occupancy Requirements, Conditions of Approval, and the LSFO’s Special Leasing Stipulations, which are in place at the Colorado State Office, would provide adequate mitigation for issuance of all lease parcels under the Proposed Action; no “unresolved resource conflicts” would remain.*

B. BLM Must Evaluate Additional Measures to Protect Priority Sage Grouse Habitat in Parcel 5945.

As discussed above, BLM must consider alternatives to address “unresolved resource conflicts” in leasing EAs. IM 2010-117 lists several measures that BLM should evaluate in those alternatives, including modifying the boundaries of proposed lease parcels. IM 2010-117 at III.F. Because parcel 5945 overlaps with high and/or medium priority sage grouse habitat, and because the existing RMP does not adequately protect that habitat, BLM should modify and exclude priority sage grouse habitat from the boundaries of parcel 5945.

According to the screen that Rocky Mountain Wild conducted utilizing the GIS data provided for the proposed lease parcels and data layers for environmentally sensitive species and habitat, approximately 12 acres of parcel 5945 overlap with the four-mile zone surrounding a known sage grouse lek. As BLM has previously recognized, the impacts of oil and gas development on sage grouse leks “remain discernible out to distances more than 6 km (3.6 miles).” Billings Field Office, Oil and Gas Lease Parcel Sale,

October 18, 2011 EA at 6;¹ *see also id.* (noting “that lek counts decreased with distance to the nearest active drilling rig, producing well, or main haul road, and that development influence[s?] counts of displaying males to a distance of between 4.7 and 6.2 km (2.9 and 3.9 miles).”). Furthermore, the LSFO’s Proposed RMP designates areas within four miles of a sage grouse lek as high or medium priority habitat. LSFO Proposed RMP at 2-17. Thus, as BLM has proposed for other parcels located in high or medium priority habitat, BLM should defer the portions of parcel 5945 (approximately 2 percent of the parcel’s acreage) that also overlap with high and/or medium priority habitat.

Recommendation: BLM should defer the twelve acres of parcel 5945 that are located in high and/or medium priority sage grouse habitat from the lease sale.

BLM Response: *Parcel 5945 does not fall within LSFO mapped high or medium priority sagebrush habitat. This parcel does not provide habitat for greater sage-grouse. The closest lek is over 4 miles from the boundary of this parcel. This information was verified with Colorado Parks and Wildlife (CPW) biologists on 10/07/11. All parcels that provided habitat for greater sage-grouse are being deferred from leasing at this time.*

C. BLM Must Evaluate Additional Measures to Protect Columbian Sharp-Tailed Grouse Habitat.

All seven parcels that are recommended for leasing contain Columbian sharp-tailed grouse winter habitat. These parcels do not have any stipulations attached to protect this habitat, however. The Colorado Division of Wildlife (CDOW) has issued best management practices (BMP) for oil and gas development aimed at protecting this species. The BMP states, “Where oil and gas activities must occur within mapped Columbian sharp-tailed grouse winter habitat, conduct these activities outside the period between December 1 and March 15.”² Thus, BLM should attach a timing limitation stipulation to the leases that is consistent with this BMP.

Recommendation: BLM should attach a timing limitation stipulation to all seven proposed lease parcels that is consistent with CDOW’s BMP for Columbian sharp-tailed grouse winter habitat.

BLM Response: *The LSFO RMP states that crucial winter habitat for sharp-tailed grouse would be closed from December 16 to March 15. Currently the LSFO does not apply this stipulation to areas that are mapped as winter habitat by CPAW. However, all parcels contain stipulation CO-34 which covers T&E and special status species. This stipulation could be used to address Columbian sharp-tailed grouse winter habitat if specific areas are found to provide “critical, severe or crucial” winter habitat for this species.*

D. BLM Must Evaluate the Sufficiency of Measures to Protect the Golden Eagle.

Parcel 6018 contains a golden eagle active nest site according to data provided by COGCC. Exhibit CO-03 creates a No Surface Occupancy (NSO) stipulation “[t]o protect raptor nests within a one-eighth mile radius from the site.” Draft EA at 98. However, this one-eighth mile buffer is not sufficient to protect golden eagles, because the U.S. Fish and Wildlife Service (USFWS) has found that the golden eagles

¹

require a 0.25 mile buffer around their nest sites.³ Thus, BLM should broaden the NSO stipulation for parcel 6018 in accordance with the USFWS recommendation.

Recommendation: BLM should expand the NSO stipulation around the golden eagle nest site located on parcel 6018 to 0.25 miles.

BLM Response: *The Record of Decision for the LSFO RMP was signed in October 2011. In the RMP, the NSO for golden eagles was increased to 0.25 miles. Since the parcel in the February lease sale would need to be consistent with the new RMP, the NSO for golden eagle nests will be changed to 0.25 miles.*

II. THE DESCRIPTION OF THE AFFECTED ENVIRONMENT REQUIRES MORE DETAIL.

The Draft EA's description of the affected environment lacks sufficient detail. Under NEPA, BLM must "succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration." 40 C.F.R. § 1502.15. Without such a description, "there is simply no way to determine what effect [an action] will have on the environment, and consequently, no way to comply with NEPA." *Half Moon Bay Fisherman's Marketing Ass'n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988).

The Draft EA's description of the affected environment is too general and lacks an adequate site-specific discussion of each proposed lease parcel's resources and values. For example, when describing terrestrial wildlife, the Draft EA states that "[a] variety of wildlife habitats and their associated species occur within the proposed leasing areas." However, aside from noting that "Parcel 5965 . . . provides habitat for elk calving," Draft EA at 25, the Draft EA provides no information about the type, condition or significance of terrestrial wildlife habitat (along with other values) on specific parcels. Without more detailed information, BLM cannot satisfy the twofold NEPA requirements of taking a "hard look" at the environmental consequences of leasing individual parcels⁴ and evaluating "appropriate mitigation measures" that address those consequences.⁵

In Wyoming, BLM has developed an extremely effective approach to describing the affected environment of proposed lease parcels. Under this approach, BLM typically includes a summary of each parcel's potentially affected "resource values" in leasing EAs. For example, in the leasing EA for the November 2011 lease sale, the High Desert District Office disclosed that:

Parcel 022 falls within a Greater sage-grouse key habitat area. The parcel provides crucial big game winter and Greater sage-grouse nesting habitat. The parcel also potentially provides habitat for Wyoming pocket gopher, Laramie false sagebrush, and Rocky Mountain twinpod. There are no known occupied dwellings within ¼ mile of the parcel. The parcel lies within the Platte River watershed and is subject to water depletion restrictions to protect threatened or endangered fish species occurring in the river proper. The predominant vegetation type is sagebrush dominated shrublands with a variety of

³ USFWS, Draft Guidelines For Raptor Conservation In The Western United States, U.S. Fish and Wildlife Service at 63 (Attachment 2). It is our understanding that these guidelines have been finalized, and that the recommendation concerning the 0.25 mile buffer zone around golden eagle nest sites was not changed from the draft.

⁴ 42 U.S.C. § 4321 et seq; 40 C.F.R. § 1508.8; *see also* *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989); *Metcalf v. Daley*, 214 F.3d 1135, 1151 (9th Cir. 2000).

⁵ 40 C.F.R. § 1502.14(f)

forbs and grasses. The parcel falls within the Seminole and Stone livestock grazing allotments. The parcel does not contain riparian habitat, but it does contain slopes greater than 25 percent. The soils are mid-elevation stabilized sand dunes that are moderate to deep, with a depth to bedrock of greater than 20 inches occurring in areas. They can have a thick organic based surface horizon and are in the 10 to 14 inch precipitation zone. They are moderately productive and are generally stable but do have areas with moderate or greater erosion potential, especially in blowout areas that are actively moving. High Desert District Office, November 2011 Lease Parcels at 18.⁶ We encourage BLM to follow such an approach here and incorporate a similar level of site-specific information for each proposed lease parcel in the Final EA.

Recommendation: In the Final EA, BLM should provide the public with additional site-specific information about the resources and values that are present on each of the proposed lease parcels.

BLM Response: *LSFO will conduct a site-specific NEPA analyses when exploration or drilling activities are proposed. The NEPA document review procedures help to assure identified mitigation measures will prevent undue and unnecessary degradation of the leased lands.*

Comments and Response: Colorado Parks and Wildlife

Lease parcel 6027 appears to be lacking an elk winter habitat timing stipulation.

Lease parcel 6018 appears to be lacking an elk production timing stipulation.

BLM Response: *Stipulations were added to the lease parcels.*

Comments and Response: Carmony Exploration, LLC

Operator is concerned that parcel that they have submitted Expression of Interest for is not included in this lease sale. Parcel was deferred during the February 2009 and November 2009 Oil and Gas Lease Sales.

BLM Response: *Previously deferred parcels will be addressed in future lease sales.*

Protests and BLM Comments: The protest period began November 10, 2011 and closed 5:00 PM Mountain time, December 12, 2011. One (1) letter of protest was received.

Protests and Responses: The Wilderness Society, Rocky Mountain Wild, and Colorado Environmental Coalition

⁶ Available at

<http://www.blm.gov/pgdata/etc/medialib/blm/wy/information/NEPA/og/1111.Par.46894.File.dat/ea.pdf>.

- Columbian Sharp-Tailed Grouse:** CNE's GIS screening of the lease sale parcels indicates that the parcels COC75185, 75186, 75187, 75188, 75190 contain Columbian sharp-tailed overall range, and winter range. COC75188 contains Columbian sharp-tailed grouse production area. Only COC75185, 75187, 75190 have a timing limitation stipulation attached to them. This timing limitation is not sufficient to protect this grouse. No surface occupancy stipulations should have been attached to these parcels to protect the Columbian sharp-tailed grouse. The other three parcels in Columbian sharp-tailed habitat have no protections for this species. At a minimum BLM should add a special lease stipulation to the parcels stating that BLM reserves the authority to implement restrictions greater than a ¼ mile buffer and seasonal timing limitations, to protect Columbian sharp-tailed grouse, if future scientific analysis suggests such measures are necessary. BLM should defer the parcels in Columbian sharp-tailed grouse habitat until proper stipulations have been attached.

BLM Response: *The alternatives analyzed and environmental impacts addressed in the LSFO RMP (October 2011) adequately address potential impacts to special status species, including Columbian sharp-tailed grouse. Mitigation measures, including a no surface occupancy and timing limitations were developed during the RMP amendment process to protect this species. Timing limitations to protect nesting and wintering sharp-tailed grouse have been attached to leases where appropriate.*

- Greater Sage-Grouse:** Parcel COC75190 is in medium priority greater sage-grouse habitat and parcel COC75186 is within 4 miles of a greater sage-grouse lek. Neither of these parcels contains stipulations addressing the greater sage-grouse. Timing and controlled surface use stipulations should be attached to these parcels to protect this species.

BLM Response: *Parcel COC75186 does not provide habitat for greater sage-grouse. Habitat within the parcel is not mapped as nesting, brood rearing, winter or even as general sage-grouse habitat by CPW. The closest lek is over 4 miles from the boundary of this parcel. This information was verified with CPW biologists on 10/07/11.*

Parcel COC75190 does not provide habitat for greater sage-grouse. Habitat within the parcel is not mapped as nesting, brood rearing, winter or even as general sage-grouse habitat by CPW. The closest lek is over 4 miles from the boundary of this parcel. A small portion of this parcel (~12 acres) is within LSFO medium priority sagebrush habitat. Medium priority sagebrush habitat does not necessarily provide habitat for greater sage-grouse. Medium priority sagebrush habitat also encompasses important big game winter habitats. This particular area is within medium priority sagebrush habitat due to big game species, not greater sage-grouse.

- Colorado Natural Heritage Program (CNHP) Potential Conservation Areas:** All or portions of parcels COC75187 and 75190 are located within CNHP Lower Priority PCAs. CNHP recommends that "consideration of specific activities or land use changes proposed within or adjacent to the preliminary conservation planning boundary should be carefully considered and evaluated for their consequences to the element on which the conservation unit is based. Given that the proposed parcels have already been recognized as being the site of 'ecological process

that are necessary to support the continued existence of an element of natural heritage significance,' the BLM should consider whether "Leasing would result in unacceptable impacts to specially designated areas (whether Federal or non-Federal) and would be incompatible with the purpose of the designation, and defer leasing accordingly.

BLM Response: *BLM consults with other Federal, State, and local agencies, partners, interest groups and industry throughout the land use planning process. These collaborations result in measures to protect all uses and resource values while still allowing for environmentally sound energy development. In all of the areas where parcels were offered, the current RMP allows energy development. When parcels were nominated for leasing, the BLM considered available new information to determine if any significant new circumstances or impacts have occurred since completion of the RMP. Every parcel offered for lease in this sale was analyzed to determine whether existing environmental analysis was adequate.*

Issuing a lease does not necessarily result in drilling. The drilling of an exploratory well doesn't guarantee there will be widespread development of wells. Some leases are never drilled, and are allowed to expire due to changes in supply vs. demand, company finances, or new/updated geologic information.

Additional site-specific NEPA analysis will be conducted upon receipt of an APD. The site-specific NEPA analysis will determine the potential impacts of the proposed actions and will be used to determine the mitigation measures required to minimize those impacts including those to social and economic impacts. Drilling of wells on a lease would not be permitted until the lease owner or operator meets the site specific requirements specified in 43 CFR 3162.

- **VI. Federal Land Policy Management Act**

- A. BLM must prevent unnecessary or undue degradation.** Leasing the protested parcels as proposed will result in unnecessary and undue degradation to rare and imperiled species and their habitat and lands of high conservation value that may be significantly impacted by the proposed leasing include CNHP designated PCAs.
- B. BLM must mitigate adverse effects.** The BLM must mitigate the adverse effects on the aforementioned imperiled species in order to comply with the "unnecessary and undue degradation" standard of FLPMA. The BLM has failed to minimized adverse impacts of oil and gas development on the aforementioned species and land of high conservation value.

- **VIII. BLM has discretion to not lease.** Under the statutory and regulatory provision authorizing this lease sale, the BLM has full discretion over whether or not to offer these lease parcels for sale. The arguments set forth in derail above demonstrate that exercise of the discretion not to lease the protested parcels is appropriate and necessary. The BLM has no legal obligation to lease the disputed parcels and is required to withdraw them until the agencies have complied with the applicable laws.

BLM Response: *The 1920 Mineral Leasing Act, as amended, authorizes the Secretary of the Interior to lease oil and gas resources on all public domain and acquired land. To lease federal oil and gas, a decision must be reached by the BLM as to which lands to lease. If a decision is reached to lease a parcel of land, additional actions will be required before on the ground operations begin. For each action, conformance with the RMP and compliance with NEPA is certified. Lease operations must conform to the decisions in the RMP.*

The BLM elected to eliminate from detailed study a Resource or Planning Area wide No Leasing Alternative. A No Lease decision is made where it is determined that oil and gas leasing is not in the public's interest. A No Lease decision is reached only after careful consideration of conflicting resource values and uses and environmental consequences. No Leasing was considered and analyzed on a site-specific basis as part of the analyzed alternatives in the 1991 FEIS. Where it was determined that even the most restrictive mitigation available (No Surface Occupancy) would not adequately mitigate conflicts or environmental consequences, which could indicate that leasing is not in the public's interest, a No Leasing decision was considered.

Restrictions are applied to field operations by federal regulation, based on all applicable laws and Section 6 of the lease instrument. Federal regulations are found in CFR, Part 43 sub-part 3100. These regulations are mandatory and give the Authorized Officer authority to determine how field operations are conducted. Operations which fall within the jurisdiction of other federal or state and local agencies may also be field inspected by those agencies.

LSFO will conduct a site-specific NEPA analyses when exploration or drilling activities are proposed. The NEPA document review procedures help to assure identified mitigation measures will prevent undue and unnecessary degradation of the leased lands.

All proposed oil and gas development is evaluated for potential impacts to BLM sensitive species, as required by BLM policy. If any special status species is identified in the Little Snake Field Office, it is protected through no-surface-occupancy stipulations and any other actions needed to prevent its deterioration and allow its recovery. The LSFO staff regularly communicates with the US Fish & Wildlife Service, CPW, CNHP, US Geological Survey, Natural Resources Conservation Service, and other "qualified" sources. Specific mitigation is applied on a site by site basis at the time of development.

The alternatives analyzed and environmental impacts addressed in the 1991 Colorado Oil and Gas Leasing Development FEIS, in our judgment, adequately address current environmental concerns, interests, and resource values including sensitive species. Environmental impacts are addressed again at a site-specific level upon receiving oil and gas Applications for Permit to Drill.

Oil and gas leasing in the LSFO remains within the reasonably foreseeable development projections as described in Appendix B and summarized in Chapter 2 of the 1991 Colorado Oil and Gas Leasing and Development FEIS. Cumulative impacts were analyzed for such

development and not considered significant because of the small area of permanently disturbed area (Chapter 4, Page 4-29).

Appeals:

The decision of the State Director may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1 (copy attached). If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from your receipt of this decision. The appellant has the burden of showing that the Decision appealed from is in error. If you wish to file a petition (pursuant to regulation 43 CFR 316s.4 (c)) for a stay of the effectiveness of this Decision during the time that your appeal is being reviewed by the Board, the petition for stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. A copy of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals (IBLSA) and to the appropriate Office of the Solicitor (see 43 CFR4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay:

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied;
2. The likelihood of the appellant's success of the merits;
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

/s/ Steve Bennett
2012

Deputy State Director-
Energy, Lands, & Minerals

Date

February 9,

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